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Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 05-00161 HG
)	
Plaintiff,)	GOVERNMENT'S RESPONSE TO
)	THE PROPOSED PRESENTENCE
vs.)	REPORT
)	
JAY PADAYAO,)	Sentencing date: 07/20/06
)	Time: 1:30 p.m.
)	Chief Judge Helen Gillmor
Defendant.)	
)	

GOVERNMENT'S RESPONSE TO THE PROPOSED PRESENTENCE REPORT

As to Paragraph 78:

The report incorporates the recent decision of *United States v. Piccolo*, 441 F.3d 1084 (9th Cir. 2006), in concluding that escape is not a "crime of violence." The Court should be aware that the government has filed a Petition for Rehearing En Banc in *Piccolo* and that petition is still pending. The government respectfully requests that the sentencing date be continued until the Ninth Circuit acts on the petition. There also is a possibility that if the Ninth Circuit rejects the

petition, the government may seek a writ of certiorari with the Supreme Court.

The United States has no other objections or comments to the Proposed Presentence report.

DATED: June 16, 2006, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii

By _____
MARSHALL H. SILVERBERG
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served Electronically through CM/ECF:

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Served by hand delivery:

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DATED: June 16, 2006, at Honolulu, Hawaii.

/s/ Cheri Abing